§ 682.401 [Corrected]

1. On page 25746, column 3, item 16, "paragraphs (b)(14) through (b)(22) are redesignated as paragraphs (b)(15) through (b)(23)", is corrected to read "paragraphs (b)(14) through (b)(23) are redesignated as paragraphs (b)(15) through (b)(24)".

[FR Doc. 94–15520 Filed 6–24–94; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AB43

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Subsistence Taking of Fish and Wildlife Regulations; Extension

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Subsistence Management Regulations for Public Lands in Alaska implementing the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 by extending the effective date of 50 CFR 100 and 36 CFR 242, § _____.26 (Subsistence taking of fish) and § _____.27 (Subsistence taking of shellfish) (58 FR 31252–31295). This interim rule would extend the regulations now set to expire June 30, 1994. They would be extended until December 31, 1995, or until revoked or superseded, whichever comes earlier.

EFFECTIVE DATE: Effective June 30, 1994, this interim rule extends the expiration date of the Subsistence Management Regulations, 50 CFR 100 and 36 CFR 242, § _____.26 (Subsistence taking of fish) and § _____.27 (Subsistence taking of shellfish) (58 FR 31252–31295) from June 30, 1994, until December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Norman Howse, Assistant Director, Subsistence, USDA—Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802; telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION:

Background—Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, a Federal Subsistence Board (Board) was established to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

On June 1, 1993, the 1993–1994 Seasons and Bag Limits for Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (58 FR 31252–31295). Those regulations which include the sections on the taking of fish and shellfish expire June 30, 1994.

On July 15, 1993, the Native American Rights Fund, on behalf of a number of individuals and organizations, submitted a petition to the Secretary of the Interior and the Secretary of Agriculture requesting that they include navigable waters within the definition of "public lands" as used in implementing Title VIII. This was a request for administrative relief. The Secretaries continue their evaluation of this petition.

On March 30, 1994, the U.S. District Court for Alaska issued a decision in the consolidated *Katie John, et al.* v. *the United States, et al.* litigation. The court concluded that the Secretaries are entitled to manage fish and wildlife on public lands in Alaska for the purposes of providing the subsistence priority mandated in Title VIII of ANILCA. The court further concluded that, for the purposes of Title VIII, "public lands" includes all navigable waterways in Alaska. The court then issued a stay of the decision for 60 days to allow the filing of an appeal and ordered that the stay would remain in effect, pending an appellate decision, if one or more appeals were filed. Because the Federal government has successfully petitioned the Ninth Circuit Court of Appeals for permission to appeal from the district court's decision, the stay presently remains in effect.

Because the petition for rulemaking is still under consideration by the Secretaries and because of the stayed court decision relative to actual Federal jurisdiction, the Board believes that issuing regulations immediately, assuming additional authority or revising existing regulations are not warranted and, in fact, appear to be inappropriate at this time. However, any comments or proposals received will be carefully considered and retained for use when the regulations are revised the next time. This interim rule effectively extends the existing regulations until December 31, 1995, or until the Secretaries direct the revision of the subsistence fish and shellfish regulations based on a revised area of jurisdiction, or until the court directs the preparation of regulations implementing its order.

The Board finds that public notice and comment requirements under the Administrative Procedures Act (APA) for this extension are impracticable, unnecessary, and contrary to the public interest. A lapse in regulatory control

after July 1 could seriously affect the continued viability of fish and shellfish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds that good cause pursuant to 5 U.S.C. 553(b)(B) to waive the public notice and comment procedures prior to publication of this extension.

The Board also finds good cause for the existing rule to be extended until December 31, 1995, (or until they are revoked or superseded whichever comes earlier). This December 31 date is consistent with earlier Board discussions proposing to change the regulatory year for fisheries regulations to January 1 through December 31 to avoid having changes occur during the middle of a fishing season. The Board therefore finds good cause under 5 U.S.C. 553(d)(3) to make this extension effective upon publication.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance—A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964) implements the Federal Subsistence Management Program and includes a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appears in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to the use of public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075.

Public reporting burden for this form is estimated to average .1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0075), Washington, D.C. 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

This rule is not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

Drafting Information

These regulations were drafted under the guidance of Richard S. Pospahala, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Thomas H. Boyd, Alaska State Office, Bureau of Land Management; John Hiscock, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian Affairs; and Norman Howse, USDA–Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, public Lands, Reporting and record keeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public lands,

Reporting and record keeping requirements, Subsistence, Wildlife.

Words of Issuance

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are amended as set forth below.

PART _____—SUBSISTENCE MANAGEMENT REGULATIONS FOR FEDERAL PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Effective June 30, 1994, the expiration date for § _____.26 and § _____.27 of Subpart D of 36 CFR Part 242 & 50 CFR Part 100 is extended until December 31, 1995.

Dated: June 6, 1994.

Ronald B. McCoy,

Interim Chair, Federal Subsistence Board.

Dated: June 9, 1994.

Philip J. Janik,

Regional Forester, USDA-Forest Service.

[FR Doc. 94–15445 Filed 6–24–94; 8:45 am]

BILLING CODE 3410–11–M 4310–55–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61, 64, and 69

[CC Docket 91–141, FCC No. 94–118]

Expanded Interconnection With Local Telephone Company Facilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission required Tier 1 local exchange carriers (LECs) (except members of the National Exchange Carrier Association (NECA)) to provide to interested third parties, including competitive access providers (CAPs), interexchange carriers, (IXCs), and end users, signalling information necessary to provide tandem switching services. These parties will thus, for the first time, be able to carry traffic of multiple IXCs from LEC end offices to their own tandems, switch traffic at that point, and deliver the traffic to the appropriate IXC. LECs must offer signalling information from their equal access end offices pursuant to tariff.

EFFECTIVE DATE: September 15, 1994.

FOR FURTHER INFORMATION CONTACT: Gary L. Phillips (202) 632–4048 or Linda L. Haller (202) 632–1298.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order* in CC Docket No. 91–141, adopted May 19, 1994, and released May 27, 1994. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Paperwork Reduction Act

Public reporting burden for this collection of information is estimated to average 37 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project, Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Summary of the Order

1. The Commission found that this decision represents another step in a series of efforts to remove barriers to competition in interstate access services. It stated that while the Commission's earlier expanded interconnection decisions opened the door to competition in special access and switched transport transmission services, interconnectors, however, had to rely on LECs to perform the switching functions necessary to provide switched transport. The Commission concluded that the Order will enable interconnectors, as well as other parties, to provide tandem switching functions for switched transport services.

2. The Commission concluded that LEC-provision of signalling information will open the door to third parties to provide competitive tandem switching services. By further reducing barriers to competition in switched access services, this action will benefit all users of tandem switching, especially small IXCs that tend to rely heavily on tandem-switched transport, who will benefit from more competitively priced tandem switching services. The Commission also found that its action should promote more efficient use and deployment of the country's telecommunications networks, encourage technological innovation, and exert downward pressure on access charges and long-distance rates, all of which should contribute to economic growth and the creation of new job opportunities. In addition, these measures should increase access to diverse facilities, which could improve network reliability.

3. The Commission required Tier 1 LECs (except NECA pool members) to provide signalling information necessary for tandem switching from LEC equal access end offices to any interested third party (hereinafter sometimes referred to as "tandem switching providers" or "TSPs"). (Tier 1 LECs are those with $100 million or more in annual regulated revenues for a sustained period of time.) In end offices in which common channel signalling (CCS or SS7) is available, TSPs shall have the option of receiving signalling information via SS7 or multi-frequency (MF) signalling. The provision of this information will be treated as a new service under the Commission's price caps regime. Tier 1 LECs must file tariff amendments to reflect the availability of signalling information from LEC equal access end offices within ninety days of the publication of the Order in the **Federal Register**. Based on the record and in light of prior decisions on pricing flexibility in the *Switched Transport Expanded Interconnection Order* and in the *Transport* proceeding, the Commission did not grant LECs additional pricing flexibility at this time. The Commission also found that the transport interconnection charge is sufficient to protect support flows potentially affected by the provision of signalling information.

Background

4. The Commission stated that it has taken several initiatives to increase competition in the long-distance market. First, in 1992, in the *Special Access Expanded Interconnection Order*, the Commission required Tier 1 LECs, except NECA pool members, to provide expanded interconnection for interstate special access to all interested parties.[1] The Commission also stated that in 1993, it adopted the *Switched Transport*

[1] *Expanded Interconnection with Local Telephone Company Facilities*, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992), 57 FR 54323 (November 18, 1992), *vacated in part and remanded in part, Bell Atlantic v. FCC*, No. 92–1619 (D.C. Cir. June 10, 1994), *recon.*, 8 FCC Rcd 127 (1992), *recon.*, 8 FCC Rcd 7341 (1991).

Expanded Interconnection Order, in which the Commission required LECs providing expanded interconnection for special access to provide expanded interconnection for switched transport service as well.[2] In that order, the Commission opened the opportunity for interconnectors to provide alternative transmission services to LEC-provided direct-trunked transport and entrance facilities by collocating transmission facilities in LEC end offices, tandems, serving wire centers (SWCs), and certain remote nodes. The Commission stated that as a result of those two actions, interconnectors are now able to provide special access and switched transport transmission services in competition with the LECs.

5. The Commission stated that only LECs, however, currently can provide tandem switching functions. Third parties cannot now provide such functions because they generally do not have access to the signalling information necessary to switch and route traffic to IXCs. Thus, virtually all tandem-switched transport currently must be routed through LEC tandems and switched by the LECs at that point; interconnectors can provide only the link between the LEC tandem and the IXC point-of-presence (POP).

6. The Commission stated that in a Second Notice of Proposed Rulemaking (*Notice*),[3] which is the subject of this proceeding, it proposed to broaden the scope of its access initiatives to address this limitation. Specifically, the Commission proposed to require LECs to provide other parties to offer tandem switching functions. Under this proposal, interconnectors would be able to offer tandem-switched transport, using their own tandems, in competition with the LECs. In addition, third parties, such as IXCs, could obtain economies by aggregating their traffic from end offices on a single direct trunk, routing that traffic to a third-party tandem, and switching it at that point.

Technical Requirements and Network Modifications

7. The Commission stated that the record identifies four types of signalling information used to provide switched transport: (1) The Carrier Identification Code (CIC), which identifies the caller's selected IXC; (2) the OZZ, which indicates the specific IXC trunk group that is to carry the call; (3) the Automatic Number Identification (ANI), which identifies the billed number; and (4) the Called Number Identification (CNI), which identifies the called telephone number. IXCs may use different trunk groups to carry different classes of calls. For example, 0+ calls may be carried on a different trunk group than direct-dialed domestic calls. The OZZ digits indicate the call type, and thus the trunk group, onto which a particular call should be routed.

Requirement to Provide Signalling Information

8. The Commission stated that currently, LECs transmit ANI and CNI to their access customers on originating Feature Group D trunks from LEC end offices and tandems. They do not, however, transmit the CIC and OZZ codes to third parties because IXCs do not need this information to route and bill calls. Thus, these latter codes are dropped by the LECs from the signalling data stream after trunk selection has taken place. In the case of direct-trunked traffic, the CIC and OZZ codes are dropped at the originating end office; in the case of tandem-switched traffic, they are dropped at the tandem. Because the CIC and OZZ codes are needed for tandem switching and are not currently provided to third parties, these data are the focus of this proceeding.

9. The Commission affirmed its tentative conclusion that broader interconnection requirements to facilitate access competition are in the public interest. In accordance with this finding, the Commission required Tier 1 LECs (except NECA pool members) to provide signalling information from equal access end offices so that third parties may install their own tandems to provide tandem-switching services. Third parties may collocate at LEC end offices and provide their own tandem-switched transport between those end offices and their tandems, or they may purchase LEC transport to their tandems. We do not require LECs to provide signalling information for tandem-switching from their tandems since we find that the record does not support the establishment of such a requirement at this time.

10. The Commission concluded that the availability to third parties of signalling information needed for tandem switching could provide significant public benefits. It would facilitate broader access competition by enabling interconnectors to offer competitive interstate tandem-switching and transport services. In addition, it would increase opportunities for small IXCs to gain economies of scale by sharing direct-routed transport facilities and providing their own tandem-switching. The Commission found that as it stated in the *Notice*, broader access competition should exert downward pressure on tandem-switched transport rates, while fostering more efficient provisioning of these services by new competitors and LECs. The Commission also concluded that in addition, competition should encourage innovation and investment in new technologies and could offer increased network reliability through route diversity and redundancy. IXCs would benefit from greater competition in the tandem-switched service market. Small IXCs would especially benefit because they tend to rely more heavily on tandem-switched transport than larger IXCs. The Commission also stated that in addition, by promoting competition in tandem-switched transport services and facilitating the use of direct-trunked transport by small IXCs, these measures should help ensure more rational cost-based pricing relationships between direct-trunked and tandem-switching transport services, thereby lessening the need for regulatory controls and fostering more efficient use of these services. All of these benefits should contribute to economic growth—by enabling IXCs to use more efficient transport arrangements, by fostering better, more reliable, and more rationally priced access services, as well as by creating new market opportunities for interconnectors.

11. The Commission also concluded that LECs can make signalling information available from their end offices at very little cost. Indeed, the record indicates that the costs to LECs of providing such information from end offices may well be *de minimis*, involving only a simple change in the end office routing table. The Commission stated that while a few LECs baldly assert that the costs of providing signalling could be significant, these LECs do not substantiate their allegations with cost estimates or data. Nor do they distinguish between end-office generated and tandem-generated signalling information The Commission found that moreover, no party has shown that the necessary modifications to LEC billing systems would be unreasonably costly or burdensome, or that the asserted need to change industry standards to accommodate the passage of CIC and OZZ codes over Feature Group D represents a significant barrier to the implementation of this

[2] *Expanded Interconnection with Local Telephone Company Facilities*, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993), 58 FR 48756 (September 17, 1993), *appeal pending sub nom. Bell Atlantic v. FCC*, No. 93–1743 (D.C. Cir., filed November 12, 1993).

[3] *Expanded Interconnection with Local Telephone Company Facilities*, Second Notice of Proposed Rulemaking, 7 FCC Rcd 7740 (1991), 56 FR 52496 (October 21, 1991).

proposal. The Commission concluded that any such measures could be accomplished without undue burden or cost.

12. The Commission stated that it was not persuaded that competitive tandem switching services would require assignment of CICs to IXCs. The record fails to indicate that any entity would actually seek to offer or use that kind of routing dynamic. Even without additional CIC assignments, IXCs would be able to designate a primary route and an overflow route for their traffic, thereby securing the benefits of both route and carrier diversity. Moreover, IXCs could vary routing between a LEC and third party tandem on an end-office-by-end-office basis or, perhaps, based on OZZ codes—thereby designating one as primary for a particular type of traffic and another for a different type of traffic. No IXC indicates that these options are insufficient, at least for now. Therefore, the Commission found, no additional CIC code assignments would have to be made to accommodate competitive tandem-switched networks.

13. The Commission also found that the record belies any contention that third parties do not really want signalling information and that IXCs do not really want to use competitively-provided tandem-switching services. The Commission found that the vast majority of parties, including IXCs, CAPs, users, and some LECs, argue that unbundled signalling information would allow development of alternatives to LEC tandem-switched transport services and they urge us to make such information available. The Commission stated that even if the measures that it now takes do not produce an immediate change in the access market, they will be beneficial in the long-term. By eliminating barriers to competition in the provision of tandem-switched services, this action will pave the way to a more competitive access market in the future. The Commission also stated that the availability of signalling information to third parties could, in itself and even without actual entry into the market by competitive tandem-switching providers, subject LEC pricing to some additional competitive pressures. Since the costs of providing signalling information from equal access end offices are so small, the Commission concluded, these benefits are well worth the costs. The Commission also stated that LECs should be required to offer signalling information from equal access end offices is not based on application of the test that governs LEC BSE offerings since signalling information is not a BSE, but that, nevertheless, its conclusion was based on the same type of cost/benefit considerations.

14. The Commission stated that it appears that providing signalling information from LEC tandems would require software upgrades to those tandems. In addition, the record indicates that tandem-provided signalling may be of less utility to TSPs than end office-provided signalling. Although some parties claim generally that tandem-provided signalling could provide a useful adjunct to other forms of interconnection, they do not explain with any specificity how they could use such an architecture, or how a two-tandem architecture could actually be competitively viable, either from a service quality or pricing standpoint. Therefore, based on the current record, the Commission did not require LECs to provide this service at this time.

15. The Commission clarified that in proposing access to LEC signalling information from LEC end offices and tandems, it did not intend to require LECs to reconfigure their SS7 networks. Thus, the Commission held that LECs may provide end-office-generated signalling information through STPs, and they may require TSPs that are terminating traffic to transmit signalling formation to LEC end offices through LEC STPs. The Commission recognized that STPs perform important network screening functions and did not require LECs to decentralize those functions by deploying them in every switch. Moreover, the record does not indicate that TSPs would seek to interconnect via SS7 at end offices, rather than at STPs. Rather, as some parties pointed out, it would be far more efficient for them to interconnect at STPs.

16. Regarding billing of terminating traffic, the Commission stated that, consistent with its earlier expanded interconnection measures, the customer of record of the terminating LEC should be billed by the terminating LEC for services provided by that LEC. If the TSP is the customer of record, the LEC should bill the TSP directly. If the TSP's customer is the customer of record, then the TSP must provide the LEC with billing tapes so that the LEC may properly count and bill access minutes. The Commission rejected the suggestion of some LECs that all discrepancies between TSP-provided billing tapes and LEC billing records be resolved in favor of the LECs. The Commission stated that TSPs and LECs can and should establish fair and reasonable procedures to resolve billing discrepancies.

17. The Commission stated that it does not base its decision that LECs must, in some instances, accept billing tapes from TSPs on a co-carrier model. It required LECs to make signalling information available to any third party, not just providers of competitive tandem-switched transport services. Thus, small IXCs may use signalling information as a way to aggregate their traffic on direct-trunked transport facilities purchased from a LEC so that they can enjoy the same scale economies as larger IXCs. In that situation, the IXC ordering the signalling and transport would be a reseller or aggregator, not a co-carrier. Indeed, if the meet-point billing model applied, TSPs would not be able to purchase direct-trunked transport from a LEC, since LEC tandem-switched transport rates to the "meet-point" would apply.

Collocation

18. The Commission affirmed its tentative conclusion that physical collocation of switching equipment should not be required. Virtually every commenter that addressed this issue supported the tentative conclusion and the reasoning behind it. Thus, the parties agreed that there is no competitive or technical benefit to locating switching equipment in LEC offices; that switching equipment is too large and too heavy to be collocated in LEC space; and that interconnectors would prefer to place their switching equipment on their own premises for monitoring purposes. The Commission found that the arguments offered in support of mandatory collocation were not convincing. It stated that no one has shown why the line-drawing process between switching and transmission equipment would be unmanageable or that collocation is necessary to ensure fair and nondiscriminatory treatment of interconnectors by LECs. The Commission's tariffing and general nondiscrimination requirements should provide sufficient protection against unfair or unreasonably discriminatory LEC rates and practices.

Pricing

19. The Commission concluded that LEC provision of CIC and OZZ data to TSPs from LEC end offices will constitute a new service under the price caps regime, which covers all Tier 1 LECs. New services add to the range of options already available to customers. While LECs currently transmit CIC and OZZ codes to their own access tandems, they do not provide this information to their customers. Therefore, these data add to the range of options of LEC customers and hence represent a new service. While LECs appear to be able to provide this new service without

implementing new technology, the need—or absence of need—for new technology does not dictate the categorization of the service under price caps. Rather, this factor affects the costs and thus the price that LECs may charge for a new service.

20. LECs will be required to make a cost-based showing under the price caps new services test. This showing will enable the Commission to ensure that signalling services are reasonably priced. The Commission will not use the net revenue test in reviewing LEC tariff filings. The Commission stated that this is consistent with its decision to eliminate the net revenue test for new service offerings under price caps. That test is unnecessary, both because of the Commission's requirement that LECs submit cost support for new services, and because LECs clearly lack incentives to underprice signalling services provided to competitive tandem-switching providers.

21. The Commission concluded further that LECs must establish new rate elements for CIC and OZZ signalling data as a separate service category within the trunking basket. This category will be subject to an upper pricing band of 2%. The Commission stated that because LECs have no incentive to price signalling services at predatory levels, it saw no need for a lower band and therefore did not impose one. The Commission believes that these measures are necessary to prevent LECs from offsetting increases in the price of signalling information provided to TSPs with price reductions in the LECs' own tandem-switched transport rates.

22. The Commission found that the co-carrier model does not aptly define the LEC/TSP relationship. It found that even though the Commission has stated in the past that cellular service providers are like co-carriers, it has never held that cellular interconnection charges should be imposed on all LEC customers or on all cellular users, rather than on the providers taking interconnection. Thus, a co-carrier model does not necessarily dictate that the costs unique to providing a joint service should always be directly imposed on the LEC's customers or on all customers of the service in question. The Commission also stated that a cost recovery mechanism that would have all purchasers of switched transport or tandem-switched transport bear the costs of making signalling information available to TSPs, is inappropriate and that instead, TSPs should pay for such costs. The Commission found that this is consistent with its long-held view that costs should be paid by the cost causer.

Recovery of Support Flows

23. The Commission stated that it appears from the record that there is no need for additional support mechanisms in conjunction with adoption of this Order. The transport interconnection charge is sufficient to protect support flows potentially affected by this decision.

ONA Framework

24. The Commission concluded that unbundled CIC and OZZ data are not BSEs as defined in its ONA orders and that there is no public policy reason to treat them equivalently. BSEs are "optional unbundled features . . . that an ESP may require or find useful in configuring an enhanced service."[4] The Commission found that there has been no showing that the CIC and OZZ data that are the subject of the Order will be used by ESPs to provide enhanced services. Rather, these data will be used by TSPs to provide basic network services. Thus, these data do not fall within the Commission's definition of a BSE.

25. The Commission also found that no party demonstrated that it would be in the public interest to treat CIC and OZZ codes as BSEs. The Commission stated that while some parties argued that the four-part test that LECs use in determining whether to offer an ESP-requested BSE should apply, it has relied on similar considerations in assessing the relative costs and benefits of LEC-provided signalling information. The Commission also stated that the "flagging" requirements associated with BSEs, under which BOCs must identify BSEs that they intend to use themselves, are irrelevant: There is no dispute that LECs use CIC and OZZ data for tandem-switched transport service. The Commission also found that there would be no added benefit from a pricing standpoint in treating CIC and OZZ data as BSEs, since it has already held that the new services test applies to their initial rates.

Tariffing and Implementation

26. The Commission required Tier 1 LECs (except NECA members) to file tariffs, with requisite cost support, for the provision of CIC and OZZ codes within ninety days from publication of this Order in the **Federal Register**, to be effective on forty-five days' notice. The Commission found that the record in this proceeding shows that LECs can provide CIC and OZZ codes to third parties from equal access end offices simply by modifying their end office routing tables, without purchasing new end office software and without making other costly and time-consuming modifications. The Commission concluded that under the circumstances, there is no reason why the LECs cannot tariff this offering for all of their equal access end offices within ninety days of publication of this Order in the **Federal Register**.

LEC Pricing Flexibility

27. The Commission did not grant LECs additional pricing flexibility but stated that it will continue to examine these issues in a broader context in future consideration of pending access reform petitions. The Commission also stated that it has already addressed virtually all of the specific proposals suggested by LECs in the *Switched Transport Expanded Interconnection Order* and the *First Transport Reconsideration*. Thus, LECs may offer density zone pricing and volume and term discounts under certain conditions. In addition, they may price transport between their tandems and SWCs on a flat-rate basis. The Commission also stated that it had considered and rejected in the *Switched Transport Expanded Interconnection Order* various other requests for flexibility. For example, the Commission rejected the suggestion that LECs receive the same pricing flexibility as their competitors, noting that giving LECs too much flexibility could stifle competitive entry and harm customers of less competitive services. The Commission also declined to eliminate service category pricing bands, stating that these bands serve important public policy goals. The Commission found that no party had shown that providing signalling information to TSPs warrants a different outcome. Nor had any party set forth any other specific pricing flexibility request related to providing signalling information. The Commission also found that no party had demonstrated that the availability of signalling information warrants authorization of LEC contract tariffs. The Commission has limited contract carriage to services found to be "substantially competitive." The Commission concluded that while the measures it now takes should permit alternatives to LEC tandem-switched access services to develop, it could not conclude that these services are now subject to substantial competition.

28. The Commission concluded that for these reasons, it would not to grant

[4] *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1, 36 (1988(, 54 FR 3453 (January 24, 1989).

LECs additional pricing flexibility in conjunction with its decision to make tandem signalling information available. The Commission stated, however, that this decision is not intended to prejudge broader questions regarding the possible need for access charge reform. The Commission stated that by opening the door to greater competition in the provision of tandem-switched services, it is continuing the process of removing barriers to the development of a more competitive access market in which CAPs and other entities can participate.

Other Issues

Reciprocity

29. The Commission declined to impose reciprocal signalling obligations on interconnectors at this time. It found, first, that requests for reciprocal obligations are beyond the scope of this proceeding. The *Notice* proposed that LECs provide signalling information to third parties. The Commission stated that it did not propose to impose reciprocal requirements on these third parties, and that it declined to broaden this proceeding to consider such requirements here. The Commission stated that second, LEC requests for reciprocity seem to assume that only CAPs will purchase signalling information. As noted, this information must be made available to any interested party, including IXCs. LECs requesting reciprocity fail to address the implications of their proposal with respect to these other types of TSPs. The Commission stated that third, except in the few instances where CAPs have end offices, interconnectors simply do not have the signalling information to provide to the LECs, and the LECs have not demonstrated specific, present needs for such information. The Commission found furthermore, that TSPs do not possess market power. It stated, for example, that the Commission had previously declined to impose reciprocal obligations on interconnectors, noting, *inter alia*, that CAPs and other interconnectors do not control bottleneck facilities.

Jurisdictional Measurement and Reporting

30. The Commission found that most parties agree that the customer of record should be responsible for reporting the PIU factor for terminating traffic when the LEC cannot itself measure jurisdiction. The Commission stated that this is consistent with existing reporting arrangements that have worked satisfactorily. If the customer of record is a TSP, it shall be the responsibility of that TSP to compile PIU reports based on data from those to whom it provides tandem-switching. If the customer of record is an IXC or other purchaser of access, that entity shall continue to provide PIU reports directly to the LEC providing terminating access.

Separations Issues

31. The Commission concluded that the signalling information requirement does not raise separations issues that should be referred to a Joint Board. The record does not show that providing signalling information will raise any significant issues beyond those already referred to the Joint Board in the *Switched Transport Expanded Interconnection Order*. As noted, the costs associated with LEC provision of CIC and OZZ codes from equal access end offices should be minimal. The Commission found that therefore, these costs or the revenues derived from providing signalling information do not require Joint Board consideration. The *Notice* stated that the Commission did not intend to refer to the Joint Board broader separations issues. The Commission stated that these matters would be more properly addressed in the context of a comprehensive separations review proceeding.

Conclusion

32. The Commission concluded that in this Order, it took another step in its ongoing effort to promote competition in the interstate access market. Tier 1 LECs (except NECA members) are required to provide signalling information from equal access end offices to interested third parties. This measure will allow third parties to provide tandem switching and thereby promote development of alternatives to LEC-provided tandem-switched transport service. CAPs may develop their own tandem-switching networks; other TSPs may use tandem-switching to achieve scale economics attending the aggregation of traffic. The Commission found that by promoting access to diverse facilities and providers, this action should permit more efficient use and deployment of interstate access services, increase network reliability and redundancy, encourage innovation, and exert downward pressure on access charges and long-distance rates. These benefits should, in turn, contribute to economic growth and the creation of new job opportunities.

Regulatory Flexibility Analysis

33. The Commission stated that in the *Notice*, it certified that the proposed rule changes would not have a significant economic impact on a substantial number of small business entities, as defined by § 601(3) of the Regulatory Flexibility Act.[5] It also stated that the *Notice* provided that to the extent that a PIU reporting requirement would apply to small entities, it would not have a significant economic impact on a substantial number of small business entities. The Commission found that no commenting party disagreed with its analysis. The Secretary shall send a copy of this Report and Order, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with § 605(b) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.*

Ordering Clauses

34. Accordingly, it is ORDERED, pursuant to authority contained in Sections 1, 4(i), 201–205, and 214(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151(i), 154, 201–205, and 214(d), that Parts 61 & 69 of the Commission's rules, 47 CFR §§ 61, 64, and 69, are AMENDED as set forth below.

35. IT IS FURTHER ORDERED that the policies, rules, and requirements set forth herein ARE ADOPTED, effective eighty days after publication in the **Federal Register**.

36. IT IS FURTHER ORDERED that the all LECs subject to this order shall file tariff amendments as specified herein within ninety days of publication of this order in the **Federal Register**, to be effective on forty-five days' notice.

List of Subjects in 47 CFR Parts 61, 64, and 69

Communication Common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 61, 64, and 69 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 61—TARIFFS

1. The authority citation for Part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.42 is amended by adding paragraph (e)(2)(vii) to read as follows:

[5] *Notice*, 7 FCC Rcd at 7749, ¶ 57.

§ 61.42 Price cap baskets and service categories.

* * * * *

(e) * * *

(2) * * *

(vii) Signalling for tandem switching, as described in § 69.129 of this chapter.

* * * * *

3. Section 61.47 is amended by adding paragraph (g)(5) as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

* * * * *

(g) * * *

(5) The upper pricing band for the "Signalling for tandem switching" service category shall limit the upward pricing flexibility for this service category, as reflected in its SBI, to two percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year. There shall be no lower pricing band for this service category.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 continues to read as follows:

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225, unless otherwise noted.

2. Section 64.1401 is amended by adding paragraph (i) to read as follows:

§ 64.1401 Expanded interconnection.

* * * * *

(i) The local exchange carriers specified in paragraph (a) of this section shall offer signalling for tandem switching, as defined in § 69.2(vv) of this chapter, at central offices that are classified as equal office end offices or serving wire centers, or at signal transfer points if such information is offered via common channel signalling.

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.2 is amended by adding paragraph (vv) to read as follows:

§ 69.2 Definitions.

* * * * *

(vv) *Signalling for tandem switching* means the carrier identification code (CIC) and the OZZ code, or equivalent information needed to perform tandem switching functions. The CIC identifies the interexchange carrier and the OZZ identifies the interexchange carrier trunk to which traffic should be routed.

3. Section 69.129 is added to read as follows:

§ 69.129 Signalling for tandem switching.

A charge that is expressed in dollars and cents shall be assessed upon the purchasing entity by a local telephone company for provision of signalling for tandem switching.

[FR Doc. 94–15443 Filed 6–24–94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. HM–208A, Amdt. No. 107–31]

RIN 2137–AC50

Hazardous Materials Transportation; Registration and Fee Assessment Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In July 1992, RSPA published a final rule establishing a national registration and fee assessment program for persons offering for transportation or transporting certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce. The fees collected under the registration program are to fund a grant program to enhance State, Indian tribal, and local hazardous materials emergency preparedness and response activities. This final rule adopts certain changes to the current registration program effective July 1, 1994, the beginning of the next registration year. The changes delay the requirement for foreign offerors to register and require a merchant vessel carrier to maintain the Certificate of Registration on board each vessel carrying hazardous materials subject to the registration requirements or to annotate its registration number on any document readily available to enforcement personnel.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph S. Nalevanko, Office of Hazardous Materials Planning and Analysis, (202) 366–4484, or Beth Romo, Office of Hazardous Materials Standards, (202) 366–4488, RSPA, Department of Transportation, 400 Seventh Street S.W., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

1. Background

On July 9, 1992, RSPA published a final rule under Docket HM–208 (57 FR 30620), establishing a national registration program, as mandated by Congress in the 1990 amendments to the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, for persons engaged in the offering for transportation or transportation of certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce. Persons currently subject to the registration program are required to annually file a registration statement with RSPA and pay an annual fee of $250 to fund a nationwide emergency response training and planning grant program for States, local governments, and Indian tribes, and a $50 administrative fee to offset DOT processing costs. The fee of $250 is the minimum amount permitted to be collected for purposes of funding the emergency response preparedness and planning grant program.

Under the authority of the HMTA, RSPA has developed and implemented a reimbursable emergency preparedness grant program. The regulations establishing this program were issued in a final rule entitled "Public Sector Training and Planning Grants" under Docket HM–209 on September 17, 1992 (57 FR 43062). The purpose of the grant program is to provide funds, technical assistance, and support to States, Indian tribes, and political subdivisions to develop, implement, and improve planning and training programs for emergency responders in the public sector. The funding for the grant program comes from the fees received from RSPA's registration program. Approximately 26,000 persons have registered with RSPA for the current registration year, substantially fewer in number than originally anticipated. RSPA is concerned that many persons who are required to register have not. Therefore, on April 1, 1994, RSPA proposed two compliance-related requirements in the NPRM to enhance nationwide compliance.

RSPA proposed that each person who offers or transports a hazardous material for which registration is required may do so only if both the transporter and the offeror (if required) are registered. They would be required, on an annual basis, to obtain each other's registration number or a copy of each other's current Certificate of Registration.

Secondly, RSPA decided to further enhance the enforcement of the registration program as it applies to foreign or domestic merchant vessel carriers. Accordingly, RSPA proposed to require that each merchant vessel carrier carry a copy of its current Certificate of Registration issued by RSPA or another document bearing the registration number identified as the "U.S. DOT Hazmat Reg. No." on board each merchant vessel carrying a hazardous material subject to the registration requirements.

As discussed in the NPRM, legislation is being considered which would grant DOT the discretionary authority to waive the registration or fee requirement for any person domiciled outside the United States, if that person's country does not impose registration or fee requirements on U.S. persons offering hazardous materials to that country (see, for example, HR 2178 which passed on November 21, 1993). Pending the outcome of these legislative initiatives, RSPA proposed to further extend the delay in application of the registration program to foreign offerors from July 1, 1994 until July 1, 1996.

II. Summary of Comments

Delay in Registering Foreign Offerors

Commenters overwhelmingly supported RSPA's proposed two-year delay in requiring registration of foreign offerors. Many commenters recommended that RSPA not implement foreign offeror registration at all because of the possibility of reciprocal action taken against the United States. A Canadian chemical manufacturers' association noted that shipments to Canada are exempt from Canadian registration requirements and strongly recommended that Canadian offerors be afforded reciprocal treatment when shipping to the U.S. Therefore, RSPA is extending, as proposed, the exemption for foreign offerors from registration and fee requirements until July 1, 1996.

Verification of Registration on Board Vessels

Several commenters questioned the need for the proposed requirement for vessel carriers to have a copy of a valid registration certificate or other document displaying a valid registration number on board each vessel. The International Chamber of Shipping stated that the proposed requirement would add to the paperwork burden on the ship and increase the workload of the ship's command. This commenter further noted that RSPA already has access to a ship's registration numbers at the operator's office or at the office of the operator's agent. The Steamship Operators Intermodal Committee claimed the total population of vessel owners, operators, and their agents is relatively small and readily identifiable. The U.S. Atlantic and Gulf/Australia New Zealand Conference added that vessels do not present the problems of vast numbers and mobility presented by motor vehicles.

Adoption of this requirement could avert potentially significant and costly delays for vessels entering and clearing U.S. port areas. The marginal cost associated with requiring a transporter's registration number on board a vessel is clearly outweighed by more significant costs resulting from time-consuming inspections by Coast Guard personnel. A readily available copy of the certificate of registration or other document indicating a valid registration number would eliminate any need for communication between the master of the vessel and the vessel owner/lessor (who could be domiciled in a foreign country) and subsequent inquiries to an agent representing the vessel. Therefore, RSPA is adopting the proposed requirement for a merchant vessel carrier to maintain the Certificate of Registration or another document indicating the valid registration number on board each vessel carrying hazardous material subject to the registration requirements readily available to enforcement personnel. However, because of the brief time period between publication of this final rule and its effective date, RSPA is providing a delay until January 1, 1995, to comply with this requirement.

Other Issues Addressed By Commenters

Most commenters opposed RSPA's proposal that offerors and transporters check each other's registration status. Responsibility for enforcing registration requirements, logistical problems, administrative burdens, and increased costs were the predominant reasons offered by commenters opposing this proposal.

Commenters overwhelmingly believed that federal and state agencies should be responsible for enforcing the regulations, not industry. A related concern expressed by commenters is that a person otherwise in compliance with the regulations could be in violation of the registration requirements by unknowingly doing business with a customer who falsely claimed to be registered. Furthermore, commenters feared that persons who are in compliance with the registration requirements and refuse to do business with unregistered customers may lose their customers and revenue to less scrupulous competitors.

Administrative burdens were identified as the creation of new databases, maintenance of additional files, and preparation of correspondence. Increased costs would involve additional function-specific training of personnel to determine if a shipment is subject to registration, higher clerical expenses for correspondence and recordkeeping, and delays or cancellations caused by a last-minute exchange of registration information.

According to many commenters, a "logistical nightmare" would result from this proposed requirement, especially when intermodal transportation is involved. Other complicated situations cited by commenters involve selection of a transporter by a customer, customer-provided transport vehicles, interlining carriers, and infrequent or irregular shipments.

Finally, numerous commenters requested a delay in the effective date of this requirement, if adopted, beyond the beginning of the 1994–95 registration year on July 1, 1994.

RSPA believes that more time is needed to explore thoroughly the issues and concerns raised by commenters to this proposal; therefore, the proposal to require verification of registration by a transporter or offeror is not adopted in this final rule. RSPA anticipates providing a more detailed evaluation of comments and alternatives to this proposed requirement, clarifying various provisions of the registration program and responding to other miscellaneous suggestions provided by commenters in a rulemaking action in the near future.

III. Summary of Regulatory Changes by Section

Part 107

Section 107.601 Paragraph (e) is revised as proposed to clarify the term "shipment" as it pertains to the scope of the registration program.

Section 107.606 This section provides exceptions from the registration requirements. In paragraph (f), foreign offerors, including foreign subsidiaries of U.S. corporations, are excepted from all registration requirements until July 1, 1996.

Section 107.608 Paragraph (a) is amended as proposed to remove outdated provisions referring to the first registration year's compliance dates.

Section 107.620 Paragraph (c) is redesignated as paragraph (d). A new paragraph (c) is added to require a

merchant vessel carrier to maintain the Certificate of Registration on board each vessel carrying hazardous materials subject to the registration requirements or to annotate its registration number on any document readily available to enforcement personnel. RSPA is providing a delay in compliance with this requirement until January 1, 1995.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). This registration regulation has no preemptive effect. It does not impair the ability of States, local governments or Indian tribes to impose their own fees or registration or permit requirements on intrastate, interstate or foreign offerors or carriers of hazardous materials.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule maintains the minimum fee requirement for all shippers and carriers of hazardous materials who are subject to the registration requirement.

D. Paperwork Reduction Act

Under 49 App. U.S.C. 1805, the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 107 is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c), 1653(d), 1655, 1802, 1804, 1805, 1806, 1808–1811, 1815; 49 CFR 1.45 and 1.53 and App. A of 49 CFR part 1.

2. In § 107.601, the last sentence in paragraph (e) is revised to read as follows:

§ 107.601 Applicability.

* * * * *

(e) * * * For applicability of this subpart, the term "shipment" means the offering or loading of a hazardous material at one loading facility using one transport vehicle, or the transport of that transport vehicle.

§ 107.606 [Amended]

3. In § 107.606, in paragraph (f), at the beginning of the first sentence, the wording "Until July 1, 1994," is revised to read "Until July 1, 1996,".

4. In § 107.608, paragraph (a) is revised to read as follows:

§ 107.608 General registration requirements.

(a) Except as provided in § 107.616(d), each person subject to this subpart must submit a complete and accurate registration statement on DOT Form F 5800.2 not later than June 30 for each registration year, or in time to comply with paragraph (b) of this section, whichever is later.

* * * * *

5. Section 107.620 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 107.620 Recordkeeping requirements.

* * * * *

(c) In addition to the requirements of paragraph (a) of this section, after January 1, 1995, each person who transports by vessel a hazardous material subject to the requirements of this subpart must carry on board the vessel a copy of its current Certificate of Registration or another document bearing the current registration number identified as the "U.S. DOT Hazmat Reg. No."

* * * * *

Issued in Washington, D.C. on June 21, 1994, under the authority delegated in 49 CFR part 1.

Ana Sol Gutiérrez,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 94–15518 Filed 6–24–94; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Endangered Status for Three Plants From the Waianae Mountains, Island of Oahu, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for three plants: *Cyanea grimesiana* ssp. *obatae* (haha), *Diellia unisora* (no common name (NCN)), and *Gouania vitifolia* (NCN). These taxa are known primarily from the Waianae Mountain Range, located on the island of Oahu, Hawaii. The three plant taxa and their habitats have been adversely threatened to varying degrees by one or more of the following—habitat degradation and competition for space, light, water, and nutrients by naturalized, alien vegetation; and habitat degradation and potential predation by feral animals. Because of the low number of extant individuals and severely restricted distributions, populations of these taxa are subject to an increased likelihood of extinction and/or reduced reproductive vigor from stochastic events. This final rule implements the Federal protection and recovery provisions provided by the Act.

EFFECTIVE DATE: This rule becomes effective July 27, 1994.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

Cyanea grimesiana ssp. *obatae* and *Diellia unisora* are endemic to the Waianae Mountain Range on the western side of the island of Oahu, Hawaii. The only known extant population of *Gouania vitifolia* also occurs in the Waianae Mountains, but the species is also known historically from West Maui and the island of Hawaii.

The island of Oahu is formed from the remnants of two large shield volcanoes, the older Waianae Volcano on the west and the younger Koolau Volcano on the east. Because of the loss of their original shield volcano shape as the result of extensive erosion, today these volcanoes are called "mountains" or "ranges," and consist of long, narrow ridges. The Waianae Mountains were built by eruptions that took place primarily along three rift zones. The two principal rift zones run in a northwestward and south-southeastward direction from the summit, and a lesser one runs to the northeast. The range is approximately 40 miles (mi) (64 kilometers (km)) long. The caldera lies between the north side of Makaha Valley and the head of Nanakuli Valley (Macdonald *et al.* 1983). The Waianae Mountains are in the rain shadow of the parallel Koolau Mountains. Except for Mt. Kaala, the highest point on Oahu (4,020 feet (ft)) (1,225 meters(m)), the Waianaes receive much less rainfall (Wagner *et al.* 1990). The median annual rainfall for the Waianae Mountains varies from 20 to 75 inches (in.) (50 to 190 centimeters (cm)), with only the small summit area of Mt. Kaala receiving the highest amount.

The land that supports these three plant taxa is owned by the State of Hawaii, the Federal government, and a private estate. Plants on Federal land are located on portions of Lualualei Naval Reservation, under the jurisdiction of the U.S. Department of Defense.

Discussion of the Three Taxa

Harold St. John (1978) described *Cyanea grimesiana* ssp. *obatae* based upon a specimen collected by John K. Obata in the Kaluaa Gulch of the Waianae Mountains, Oahu, in 1965. St. John named the subspecies in honor of its discoverer.

Cyanea grimesiana ssp. *obatae*, a member of the bellflower family (Campanulaceae), is a shrub, usually unbranched, growing from 3.3 to 10.5 ft (1 to 3.2 m) tall. Its leaves are 10.5 to 23 in. (27 to 58 cm) long by 5.5 to 12.5 in. (14 to 32 cm) wide and are deeply cut into 9 to 12 lobes per side. The plant usually has small prickles on its stem and leaves. Clusters of 6 to 12 stalked flowers arise from the leaf axils. Sepals are fused to the ovary forming a cup 0.3 to 0.6 in. (0.7 to 1.6 cm) long with small, narrow, triangular lobes at the tips. The petals are purplish or greenish to yellow-white, often washed or striped with magenta, and are about 2 to 3 in. (5.5 to 8 cm) long and 0.2 to 0.4 in. (0.5 to 1 cm) wide. Fruits are elliptical orange berries, 0.7 to 1.2 in. (1.8 to 3 cm) long. This subspecies can be distinguished from the other two subspecies by its short, narrow, calyx lobes which are not fused or overlapping (Lammers 1990, St. John 1978).

Historically, *C. grimesiana* ssp. *obatae* is known from the southern Waianae Mountains from Puu Hapapa to Kaaikukai (Hawaii Heritage Program (HHP) 1992a1 to 1992a6, Lammers 1990), a distance of about 4 mi (6.5 km). This taxon is known to be extant in Kaluaa Gulch, but may also still exist in Ekahanui and North Palawai Gulches. All populations are on privately owned land (HHP 1992a2, 1992a4, 1992a6; Joel Lau, The Nature Conservancy, Steve Perlman, National Tropical Botanical Garden, and Loyal Mehrhoff, U.S. Fish and Wildlife Service, pers. comms., 1993). Five plants are known from the Kaluaa population and as many as 13 plants may be found in the other 2 populations (J. Lau, pers. comms., 1992, 1993), though these populations have not been seen in the last 10 years. *C. grimesiana* ssp. *obatae* typically grows on steep, moist, shaded slopes in diverse mesic to wet forests at an elevation of 1,800 to 2,200 ft (550 to 670 m) (HHP 1992a2, Lammers 1990). Associated plants include both native and introduced species such as *Pipturus albidus* (mamaki), *Charpentiera* (papala), *Claoxylon sandwicense* (po'ola), *Pisonia* (papala kepau), *Acacia koa* (koa), *Aleurites moluccana* (kukui), *Cyanea membranacea* (haha), and various fern taxa (HHP 1992a2). The major threats to *C. grimesiana* ssp. *obatae* are competition from alien plants such as *Clidemia hirta* (Koster's curse) and *Schinus terebinthifolius* (Christmas berry), predation of seeds or fruits by introduced slugs, and stochastic extinction and/or reduced reproductive vigor due to the small number of extant individuals (HHP 1992a2; L. Mehrhoff, pers. comm., 1993). Habitat degradation by feral pigs is a potential threat (HHP 1992a2).

Donald L. Topping discovered *Diellia unisora* growing on a shaded, mossy bank in Pohakea Pass, Waianae Mountains, Oahu, in 1932. It was first reported and illustrated by Frances Smith (1934) who believed it to be a specimen of *D. pumila*, although she pointed out several differences between that species and the Topping specimen. Warren H. Wagner, Jr., believing that the plant discovered by Topping merited specific recognition, described the new species, giving it the specific epithet *unisora* in reference to the usually single, marginal spore-producing body (Wagner 1951).

Diellia unisora, in the fern family Polypodiaceae, grows from a slender, erect rhizome (underground stem), 0.2 to 1.2 in. (0.5 to 3 cm) tall and 0.2 to 0.4 in. (0.5 to 1 cm) in diameter, which is covered with the bases of the leaf stalks and a few small black scales. Stalks of the fronds are black and shiny, and about 0.8 to 2 in. (2 to 5 cm) long. The fronds are linear, 3 to 12 in. (8 to 30 cm) tall by 0.2 to 1.2 in. (0.5 to 3 cm) broad, with 20 to 35 pinnae (leaflets) per side, and gradually narrowing towards the apex. The pinnae are usually strongly asymmetrical in outline, unequally triangular, with mostly entire (smooth) margins. There usually is a single marginal sorus (the spore-producing body) running along the upper margin of the underside of the pinna. This species is distinguished from others in the genus by a rhizome completely covered by the persisting bases of the leaf stalks, and few, very small scales, by sori mostly confined to the upper pinnae margins, and by delicate fronds gradually and symmetrically narrowing toward the apex (Wagner 1951, 1952).

Historically, *D. unisora* was known from steep, grassy, rocky slopes on the western side of the Waianae Mountains, Oahu (HHP 1992b1 to 1992b4; Wagner 1951, 1952). This species is known to be extant in three areas of the southern Waianae Mountains—South Ekahanui Gulch, Palawai Gulch, and the Pualii-Napepeiauolelo Ridge (HHP 1992b2 to 1992b4). The three known populations, which are on Lualualei Naval Reservation and on privately owned land, are scattered over a distance of about 2 mi (3 km), and contain approximately 705 to 755 individuals (Center for Plant Conservation 1992; HHP 1992b2 to 1992b4; J. Lau, pers. comm., 1993). *Diellia unisora* is a terrestrial fern which typically grows in deep shade or open understory in dryland forest at an elevation of 1,750 to 2,500 ft (530 to 760 m) (HHP 1992b2 to 1992b4). Associated species include koa, Christmas berry, *Psidium cattleianum* (strawberry guava), and *Metrosideros polymorpha* ('ohi'a), and a mixture of alien and native grasses, forbs, and shrubs (HHP 1992b2 to 1992b4). The major threat to *D. unisora* is competition from alien plant taxa

(Christmas berry, *Melinus minutiflora* (molasses grass), *Passiflora suberosa* (huehue haole), and (strawberry guava). Habitat degradation by feral pigs is a potential threat (HHP 1992b2, 1992b4).

Gouania vitifolia was first collected on dry hills in the district of Waianai [Waianae] during the U.S. Exploring Expedition in 1840. Asa Gray was given the task of preparing a report on all of the foreign plants collected by the expedition. Of the two volumes he produced concerning these specimens, only one was published, and in it *G. vitifolia* was described as a new species (Gray 1854). The species epithet was derived from the Latin *vitis*, a vine or grapevine, and *folium*, leaf, as the toothed leaves of this species resemble those of the grape. The Maui Island population of this species, first collected above Lahaina on West Maui by Edward F. Bishop, probably in the 1870s, was described and named *G. bishopii* in honor of its discoverer by William Hillebrand (1888). In his monograph of the genus, St. John (1969) described *G. hawaiiensis* as a new species based upon a collection made in the Kau District of Hawaii Island in 1853 by Jules Remy. Both of these taxa are currently considered synonyms of *G. vitifolia* (Wagner *et al.* 1990).

Gouania vitifolia, a member of the buckthorn family (Rhamnaceae), is a climbing shrub or woody vine with tendrils. Leaves are papery in texture with a moderate to dense covering of short, soft hairs on both surfaces. The leaves are elliptic to broadly oval in outline with toothed or lobed margins and 1.2 to 3.2 in. (3 to 8 cm) long by 0.8 to 1.9 in. (2 to 4.8 cm) wide. Flowers are arranged in axillary spikes 0.3 to 2.8 in. (0.8 to 7 cm) long. The flowers are small with sepals and petals ranging from 0.03 to 0.04 in. (0.7 to 1.1 mm) in length. Both the sepals and petals are white. The 2- or 3-winged fruit are about 0.4 in. (9 to 10 mm) long. Seeds are oval, glossy, dark brown, and about 0.1 to 0.2 in. (3.4 to 5 mm) long. This species is the only Hawaiian member of the genus with tendrils and toothed leaf margins (St. John 1969, Wagner *et al.* 1990).

Historically, *G. vitifolia* was known from West Maui, the Kau District of the island of Hawaii, and the northwestern portion of the Waianae Mountains in Makaleha, Keaau, and Waianae Kai Valleys (Degener and Greenwell 1947, HHP 1992c1 to 1992c5, St John 1969, Wagner *et al.* 1990). A single population of five individuals was discovered in 1990 on the slopes of Waianae Kai Ridge on State-owned land (Anon. 1991, HHP 1992c5). The five plants are close to one another, growing in a single patch in a forest of mostly naturalized, non-native taxa (HHP 1992c5), and may represent clones of a single individual (Joel Lau, HHP, pers. comm., 1992). A second, smaller patch was discovered near the first, and probably represents a second clone. Information is scant, but data from herbarium labels indicate that *G. vitifolia* prefers dry, rocky ridges and slopes in dry shrubland or dry to mesic forests at an elevation of about 2,000 ft (610 m). Associated taxa include strawberry guava, kukui, Christmas berry, huehue haole, and mamaki (HHP 1992c5). The major threats to *G. vitifolia* are competition from alien plant taxa such as strawberry guava and Christmas berry, habitat destruction by feral pigs, and stochastic extinction and/or reduced reproductive vigor due to the small number of extant individuals, all of which may be genetically identical (HHP 1992c5).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. *Diellia unisora* was considered threatened and *Gouania vitifolia* was considered extinct in that document. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant species named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species. *Gouania vitifolia* was considered endangered in the proposed rule, but *D. unisora*, as a threatened species, was not included. The list of 1,700 plant species was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). *Gouania vitifolia* was included as a Category 1* species on all three notices of review. Category 1* species are those for which the Service has on file substantial information on biological vulnerability and threats in the recent past, but which may have already become extinct. Because a population of *G. vitifolia* was discovered in 1990, it is considered herein for listing. *Diellia unisora* was considered a Category 1 species on the 1980 and 1985 notices, but was changed to a Category 1* species on the 1990 notice. Category 1 species are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. *Cyanea grimesiana* ssp. *obatae* first appeared on the 1990 notice, as a category 2 species. Category 2 species are those for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. Additional recently acquired biological information supports listing of *C. grimesiana* ssp. *obatae*. The September 30, 1993, **Federal Register** (58 FR 51143) notice of review indicated all three of these species were proposed for listing.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the proposed rule constituted the final 1-year finding for these species.

On December 14, 1992, the Service published in the **Federal Register** (57 FR 39066) a proposal to list the three plant taxa from the Waianae Mountains,

island of Oahu, as endangered. This proposal was based primarily on information supplied by the Hawaii Heritage Program and observations by botanists and naturalists. The Service now determines the three species primarily from the Waianae Mountains to be endangered with the publication of this final rule.

Summary of Comments and Recommendations

In the December 14, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. The public comment period ended on January 28, 1993. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the "Honolulu Advertiser" on December 26, 1993. Two letters of comment were received—one from a conservation organization and the other from a concerned citizen—supporting the listing of these taxa from the Waianae Mountains, island of Oahu, but raising no specific issues.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR Part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cyanea grimesiana* ssp. *obatae* St. John (haha), *Diellia unisora* W.H. Wagner (no common name (NCN)), and *Gouania vitifolia* A. Gray (NCN) are as follows (Table 1):

TABLE 1.—SUMMARY OF THREATS

Species	Alien animals			Alien plants	Limited numbers*
	Pigs	Goats	Rodents		
Cyanea grimesiana ssp. *obatae*	P	P	P	X	X1,2
Diellia unisora	P	P	P	X	X1
Gouania vitifolia	X	P	P	X	X1,2

X=Immediate and significant threat.
P=Potential threat.
*No more than 100 individuals and/or no more than 5 populations.
1 No more than 5 populations.
2 No more than 10 individuals.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitats of the plants included in this final rule have undergone extreme alteration because of past and present land management practices, including deliberate alien plant and animal introductions, agricultural development, and military use (Frierson 1973, Wagner *et al.* 1985). Competition with alien plants and degradation of habitat by feral pigs are considered the greatest present threats to the three taxa.

All of the three species are threatened by competition from one or more alien plant taxa. *Schinus terebinthifolius* (Christmas berry), an aggressive tree introduced to Hawaii before 1911 as an ornamental, has had particularly detrimental impacts (Cuddihy and Stone 1990). This fast-growing alien plant is able to form dense thickets, displacing other plants, and also may release a chemical that inhibits the growth of other species (Smith 1985). As early as the 1940s, Christmas berry had invaded the dry slopes of Oahu and it is now replacing the native vegetation of much of the southern Waianae Mountains (Cuddihy and Stone 1990). Christmas berry is gradually invading other areas of the Waianae Mountains as well, and now threatens to occupy the habitat of the three endangered plant taxa (HHP 1992a2, 1992b2 to 1992b4, 1992c5).

Psidium cattleianum (strawberry guava), a pervasive alien tree in the southern Waianae Mountains, is distributed mainly by feral pigs and fruit-eating birds (Smith 1985). Like Christmas berry, strawberry guava is capable of forming dense stands to the exclusion of other plant taxa (Cuddihy and Stone 1990). Populations of *Diellia unisora* and *Gouania vitifolia* are immediately threatened by competition with this alien plant (HHP 1992b3, 1992c5).

Clidemia hirta (Koster's curse), a noxious shrub first cultivated in Wahiawa on Oahu, spread to the Koolau Mountains in the early 1960s, where it is now rapidly displacing native vegetation. Koster's curse spread to the Waianae Mountains around 1970 and is now widespread throughout Honouliuli (Cuddihy and Stone 1990, Culliney 1988). This species forms a dense understory, shading other plants and hindering plant regeneration. At present, Koster's curse is the major threat to *Cyanea grimesiana* ssp. *obatae* (HHP 1992a2).

The native vegetation of the leeward ridges of the Waianae Mountains is being replaced by *Melinus minutiflora* (molasses grass), another aggressive alien plant species. Molasses grass ranges from the dry lowlands to the lower wet forests, especially in open areas with sparse vegetation. This fire-adapted grass produces a dense mat capable of smothering plants, provides fuel for fires, and carries fires into areas with native woody plants (Cuddihy and Stone 1990). One population of *Diellia unisora* is vulnerable to molasses grass (HHP 1992b2, 1992b4).

Passiflora suberosa (huehue haole), a vine that smothers small plants in the subcanopy of dryland habitats (Smith 1985), poses an immediate threat to some populations of *Diellia unisora* (HHP 1992b2, 1992b3). With its major infestations in the Waianae Mountains, it is also a probable threat to the only known extant population of Gouania vitifolia (HHP 1992c5).

Feral pigs (*Sus scrofa*) have been in the Waianae Mountains for about 150 years and are known to be one of the major current modifiers of forest habitats (Stone 1985). Pigs damage the native vegetation by rooting and trampling the forest floor and encourage the expansion of alien plants that are better able to exploit the newly tilled soils than are native taxa (Stone 1985). Pigs also disseminate alien plant taxa through their feces and on their bodies, accelerating the spread of alien plant taxa within the native forest. Present throughout the Waianae Mountains in low numbers, feral pigs pose a potential threat as some pig trails and rooting

have been seen in the general areas of all three plant taxa included in this rule. The rooting was localized and no direct damage to any of the three plant taxa was noted. However, this situation could change very quickly (HHP 1992a2, 1992b2, 1992b3, 1992c5).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Illegal collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to all of the taxa included in this final rule, but especially to *Cyanea grimesiana* ssp. *obatae*, which is known from only a single population of five plants, and *Gouania vitifolia*, which is known from only one population of two probable clones. Collection of whole plants or reproductive parts of these taxa could cause an adverse impact on the gene pool and threaten the survival of the taxa. Disturbance to the area by human trampling also could promote erosion and greater ingress by competing alien taxa.

C. *Disease or predation.* Introduced slugs have been observed to feed on ripe fruits and seeds of *Cyanea grimesiana* ssp. *obatae*. This predation could seriously affect the reproduction of this taxon (L. Mehrhoff, pers. comm., 1993). In addition, rats (*Rattus* spp.) and feral goats (*Capra hircus*), as well as feral pigs, are known from the area and damage to fruits, seeds, and plants from their foraging on other plant taxa has been observed.

D. *The inadequacy of existing regulatory mechanisms.* Of the three taxa in this final rule, two have populations located on private land, one on State land, and one on Federal land. *Diellia unisora* is known only from Federal and private lands; *Gouania vitifolia* is known only from State land; *Cyanea grimesiana* ssp. *obatae* is known only from private lands. Federal listing automatically results in listing under Hawaii State law, which prohibits taking of endangered plants in the State and encourages conservation by State agencies. State regulations prohibit the removal, destruction, or damage of plants found on State lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, "Any species of aquatic life, wildlife, or wild plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of these three plant taxa, therefore, reinforces and supplements the protection available to the taxa under State law. The Federal Act also offers additional protection to these three taxa because it is a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. *Other natural or manmade factors affecting its continued existence.* The small number of populations and individuals of all of these taxa increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. All three taxa in this rule are known from three or fewer populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to issue this final rule. Based on this evaluation, the preferred action is to list these three plant taxa as endangered. These taxa are known from fewer than five populations. The three taxa are threatened by one or more of the following: Habitat degradation and competition from alien plants; habitat degradation and potential predation by feral animals, particularly pigs; and lack of legal protection or difficulty in enforcing laws which are already in effect. Small population size and limited distribution make these taxa particularly vulnerable to extinction and/or reduced reproductive vigor from stochastic events. Because these three taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical habitat is not being designated for the three taxa included in this rule, for reasons discussed in the "Critical Habitat" section of this final rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is listed as endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these taxa. The publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers as required in a proposal for critical habitat would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of these taxa as endangered publicizes the rarity of the plants and thus can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the importance of protecting the habitat of these taxa. Protection of the habitat of the taxa will be addressed through the recovery process. Although one of these taxa is located on a federally owned military reservation, it is on steep slopes near the reservation boundaries where it is unlikely to be impacted by Federal activities. Therefore, the Service finds that designation of critical habitat for these taxa is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these taxa.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on

any action that is likely to jeopardize the continued existence of species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. One of these plant taxa, *Diellia unisora*, is located on the Lualualei Naval Reservation under the jurisdiction of the U.S. Department of Defense. However, because the plant is located on steep slopes near the reservation boundaries, it is unlikely to be impacted by Federal activities. There are no other known Federal activities that occur within the present known habitat of these three plant taxa.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to the three endangered plant taxa, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from an area under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the plants are not common in cultivation nor in the wild.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203–3507 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Pacific Islands Office (see **ADDRESSES** section).

Authors

The primary authors of this rule are Marie M. Bruegmann, Loyal A. Mehrhoff, and Derral R. Herbst of the Fish and Wildlife Service Pacific Islands Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under the families indicated, and by adding a new family "Polypodiaceae—Fern family," in alphabetical order, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Campanulaceae—Bellflower family:						
Cyanea grimesiana ssp *obatae.*	Haha	U.S.A. (HI)	E	540	NA	NA
*	*	*	*	*	*	
Polypodiaceae—Fern family:						
Diellia unisora	None	U.S.A. (HI)	E	540	NA	NA
*	*	*	*	*	*	
Rhamnaceae—Buckthorn family:						
Gouania vitifolia	None	U.S.A. (HI)	E	540	NA	NA
*	*	*	*	*	*	

Dated: June 6, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–15539 Filed 6–24–94; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 940677–4177; I.D. 060194D]

Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule.

SUMMARY: NMFS publishes this emergency interim rule at the request of the South Atlantic Fishery Management Council (South Atlantic Council) to prohibit all taking of live rock in the exclusive economic zone (EEZ) off the southern Atlantic states from the North Carolina/Virginia boundary to the Dade/Broward County line in Florida; to prohibit the taking of live rock by chipping in the EEZ from the Dade/Broward County line in Florida to the Atlantic/Gulf of Mexico boundary; and to limit the harvest of live rock from the EEZ off the southern Atlantic states in 1994 to 485,000 lb (219,992 kg).

EFFECTIVE DATE: June 27, 1994, through September 26, 1994.

ADDRESSES: Copies of documents supporting this action, including an environmental assessment, may be obtained from Georgia Cranmore, Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–893–3161.

SUPPLEMENTARY INFORMATION: Coral and coral reefs in the EEZ off the southern Atlantic states and in the Gulf of Mexico are managed under the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Gulf Council) and the South Atlantic Fishery Management Council (South Atlantic Council) and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Live rock consists of living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding mollusk shells), and therefore is a "fish" within the meaning of the Magnuson Act. Live rock is collected by scuba divers and sold to the marine aquarium industry, which markets it as the basis for minireef aquaria. Live rock is a nonrenewable resource providing essential fishery habitat in the Gulf of Mexico and Atlantic Ocean.

On May 16, 1994 (59 FR 25344), NMFS published an emergency interim rule to control the taking of live rock in the Gulf of Mexico. A description of the fishery and the rationale for that rulemaking are contained in that rule and are not repeated here.

In part because of concerns about effort shifting from recently closed areas in the Gulf of Mexico to current or new harvest areas off the southern Atlantic states, the South Atlantic Council requested an emergency rule to: (1) Prohibit the taking of live rock in the EEZ off the southern Atlantic states from the North Carolina/Virginia boundary to the Dade/Broward County line in Florida; (2) prohibit chipping of live rock in the EEZ from the Dade/Broward County line in Florida to the Atlantic/Gulf of Mexico boundary; and (3) limit the harvest of live rock in 1994 from the EEZ off the southern Atlantic states to 485,000 lb (219,992 kg).

Reported landings from the Florida portion of the proposed closed area totaled less than 10,000 lb (4,536 kg) in 1993 or about 1 percent of all Florida landings. Florida is the only state in which live rock landings have been recorded. This emergency closure is designed in part to prevent expansion of harvesting effort into new areas.

Chipping means breaking up reefs, ledges, or rocks into smaller fragments, usually by means of a chisel and hammer. Chipping causes serious damage to hard bottom habitats including coral reefs in the Florida Keys. Recent public testimony to the Gulf and South Atlantic Councils indicated that chipping accounts for about 10 to 20 percent of the live rock harvest off the southern Atlantic states. In the Gulf of Mexico, chipping of limestone ledges and worm reefs accounts for about 90 percent of the live rock harvest.

During a proposed phase out of live rock harvesting under Amendment 2 to the FMP, which is currently under development, the Gulf and South Atlantic Councils intend to limit harvest to loose rubble rock that is primarily the result of natural erosion processes. About 485,000 lb (219,992 kg) of rubble live rock were reported landed in Florida in 1992, and this is the basis for the 1994 quota. Data available to the South Atlantic Council indicate that live rock landings are increasing and the quota for 1994 is likely to be exceeded prior to implementation of management measures in Amendment 2.

The Florida Department of Environmental Protection (DEP) estimates that the quota will probably be met sometime in October 1994. If a shift of harvesting effort from the Gulf of Mexico to the Atlantic occurs due to the Gulf emergency rule or other factors, the quota could be reached much earlier. Amendment 2 is not expected to be implemented until mid November 1994. The South Atlantic Council therefore requested emergency action to implement the 1994 quota and to prohibit all chipping of live rock to prevent damage to the Florida reef tract and serious loss of fishery habitat in the EEZ off the southern Atlantic states, including the Florida Keys National Marine Sanctuary.

According to the Florida DEP, the closure of the EEZ north of Florida's Dade/Broward County line to live rock collecting may affect approximately 12 individuals who reported live rock landings in 1993; however, the ex-vessel value of these landings was only about $800 per Florida Saltwater Products License (SPL). In Dade and Monroe Counties, Florida, live rock landings in 1993 were reported by 96 SPL holders. These fishermen will be required to confine their harvest to loose rubble rock, which may have a marginal effect on the total value of their catch. A 485,000-lb (219,992-kg) quota will probably reduce potential 1994 landings by at least 15 percent or about $1,000 per SPL holder. Amendment 2 is expected to be submitted by the Gulf and South Atlantic Councils in July 1994 for review and, if approved, for implementation by the Secretary of Commerce. Amendment 2 would implement the measures in this emergency interim rule on a permanent basis and include a phase out schedule for live rock harvests in other areas.

Compliance With NMFS Guidelines for Emergency Rules

The South Atlantic Council and NMFS have concluded that the present situation constitutes biological and conservation emergencies, which are properly addressed by this emergency interim rule, and that the situation meets NMFS's policy guidelines for the use of emergency rules, published on January 6, 1992 (57 FR 375). The situation: (1) Results from recent, unforeseen events or recently discovered circumstances; (2) presents a serious management problem; and (3)